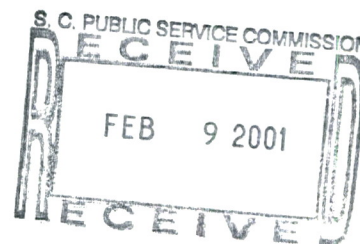


Caroline N. Watson  
General Counsel-South Carolina

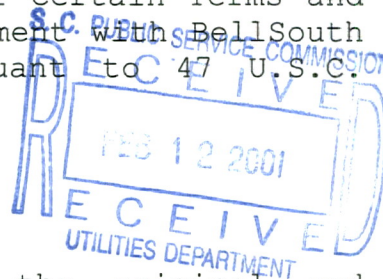
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February 9, 2001

The Honorable Gary E. Walsh  
Executive Director  
Public Service Commission of SC  
Post Office Drawer 11649  
Columbia, South Carolina 29211



Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252.  
Docket No.: 2000-527-C



Dear Mr. Walsh:

Enclosed for filing please find the original and fifteen copies of BellSouth's Motion for Reconsideration and/or Rehearing of Commission Order No. 2001-79 in the above-referenced matter.

By copy of this letter, I am serving this motion upon all parties of record.

Sincerely,

  
Caroline N. Watson

CNW/nml

Enclosures

cc: Florence P. Belser, Esquire  
Mr. Gene Coker  
Francis P. Mood, Esquire

POSTED  
002-501

ACCEPTED  
Legal *Wm* 2/12/01  
BEFORE THE

S. C. PUBLIC SERVICE COMMISSION  
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PUBLIC SERVICE COMMISSION  
FOR THE STATE OF SOUTH CAROLINA

DOCKET NO. 2000-527-C

Petition by AT&T Communications )  
of the Southern )  
States, Inc. for arbitration of )  
certain terms and conditions of a )  
proposed agreement with )  
BellSouth Telecommunications, Inc. )  
Pursuant to 47 U.S.C. § 252. )

S. C. PUBLIC SERVICE COMMISSION  
RECEIVED  
FEB 12 2001  
RECEIVED  
UTILITIES DEPARTMENT

**BELLSOUTH'S MOTION FOR RECONSIDERATION AND/OR REHEARING OF  
COMMISSION ORDER NO. 2001-079**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to 26 S.C.Code Ann.Reg. 103-881 (Supp. 2000), S.C. Code Ann. § 58-9-1200 (1976), and other applicable law, hereby moves for the Public Service Commission of South Carolina ("Commission") to reconsider, or set for rehearing, a ruling made by the Commission in Order No. 2001-0179, dated January 30, 2001, and received by BellSouth on January 30, 2001 ("Order on Arbitration"). Specifically, BellSouth respectfully requests the Commission to reconsider (or set for rehearing) its ruling on Issue 6: "Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace service

currently purchased from BellSouth tariffs?" The grounds for BellSouth's motion are set forth below.

1. In its Order on Arbitration, pp. 12-17, the Commission ruled on whether termination liability charges should apply when existing services that are being provided to AT&T under value and term contract(s) are converted to unbundled network elements ("UNEs"). For the reasons set forth below, it is respectfully submitted that the Commission erred when it concluded "that AT&T should not be subject to termination penalties for converting special access purchased under tariffed services pursuant to contracts to network elements." Order on Arbitration, p. 16.

2. As set forth more fully in BellSouth's post-hearing brief and proposed order, this issue arises when AT&T purchases a tariffed service from BellSouth under a volume and term contract, and thereafter wants to convert that tariffed service to UNEs. BellSouth will convert pre-existing combinations to UNE rates at AT&T's request. However, it is respectfully submitted that the Commission erred when it relieved AT&T from its contractual obligation of paying termination charges upon a request to convert a tariffed service to UNEs.

3. AT&T has benefited from volume and term contracts by generally paying lower rates than it would have paid if it had not entered into such agreements. In exchange for these favorable rates, AT&T agreed to pay "termination" liabilities in

the event the contract is terminated early or the volume commitment is not met. By allowing AT&T to convert some of the services it has purchased under these term or volume contracts to UNEs without paying the appropriate termination charges, the Commission has impermissibly impaired and altered the contractual obligations of AT&T and BellSouth. Neither party has disputed the validity of the volume and term contracts. Accordingly, the Commission erred when it allowed AT&T to abrogate its contract with BellSouth. The Commission's ruling violates the Contract Clauses of both the federal and state constitutions. United States Constitution, Art. I, Sec. 10 and South Carolina Constitution Art. I, Section 4.

5. Additionally, the FCC has made a determination on this precise point. The ruling of the Commission contradicts the FCC's Order determining that termination liability should apply when converting from special access to UNE combinations. See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC Order 99-238, CC Docket 96-98, Released 11/5/99. The FCC anticipated this specific issue and states "We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts." FCC Order 99-238, p. 221, f. 985. The Commission cannot distinguish between its decision regarding the issues

presented herein and the issues underlying the decision of the FCC.

6. Moreover, the Commission's ruling discriminates against two other classes of customers in South Carolina. The first class consists of customers who also have term and volume contracts who will have to pay termination liabilities if they terminate their contracts early or do not meet their volume commitments. The second class consists of customers who are on month-to-month contracts, thus paying a higher rate than AT&T, precisely because they did not want to incur the possibility of paying termination liabilities. The Commission's position on this issue discriminates against both of these classes of customer.

Although it is not precisely the same issue, what AT&T is essentially arguing is that it is entitled to take a "fresh look" at its contract in light of changed circumstances. It alleges that at the time that it entered into these contracts, it had no alternatives but to buy the services in question from BellSouth, since BellSouth would not sell the underlying combinations of unbundled network elements ("UNE"). BellSouth has several responses to this position. First, AT&T's assertion is not true. AT&T could have bought the unbundled network elements that it wanted, and combined the elements itself. AT&T objected to doing so, asserting that it would have been too

expensive for AT&T. Alternatively, AT&T could have purchased the services in question on a month-to-month basis, paying the higher rate that would entail. In that circumstance, BellSouth would now convert the services to UNE combinations, and AT&T would have no termination liability. It is only because AT&T has tried to cut corners, and to obtain services from BellSouth in the cheapest way possible, that this situation exists.

Moreover, even if this were not the case, the "fresh look" approach is not universally accepted, since in its rawest terms it is simply allowing the state to interfere with a contract freely entered into by two entities that are certainly capable of understanding the consequences of their actions. Many states that have considered requests to approve a "fresh look" have concluded that it would be improper to authorize such an action. For example, the North Carolina Utilities Commission rejected a similar demand by CLECs for a "Fresh Look" rule. Order Dismissing Fresh Look Petition on Jurisdictional Grounds, Docket No. P-100 Sub 133 (N.C.U.C. May 22, 1998). The North Carolina Commission noted that neither Congress, the Federal Communications Commission (FCC), nor the Legislature had decided to impose a "fresh look" requirement, although each had the opportunity to do so. *Id.* at 12. That Commission concluded that, although it has general authority to facilitate and promote local competition, it lacked specific statutory

authority to adopt a rule authorizing the abrogation of existing contracts. Id. at 13. Other states have come to similar conclusions. See In re: New England Tel. & Tel. Co., Docket 5713 (Vt. Public Serv. Bd. Aug. 20, 1997) (holding that "NYNEX should not be required to give its customers a 'fresh look' because there was 'no reason to free these customers from the obligations that they knowingly took on'"); In re: City Signal, Inc., Case No. U-10647 (Mich. Public Serv. Comm'n Feb. 23, 1995) (rejecting "fresh look" proposal, noting that "customers should be aware of the risk involved in entering into long-term contracts" in an increasingly competitive marketplace); In re: Illinois Bell Tel. Co., Case No. 94-0096, 94-0117, 94-0146 (Illinois Commerce Comm'n April 7, 1995) (rejecting "fresh look" proposal and holding that, "[i]n the absence of evidence that the contracts were entered into for anti-competitive purposes, we will not disturb them"); In re: MFS Communications Co. Inc., PUC Docket No. 16189 (Texas Public Utility Comm'n November 7, 1996) (holding that "SWBT is not required to provide a fresh look opportunity for its customers currently under long term plans"); In re: Northwest Payphone Association v. U.S. West, Docket No. UT-920174 (Wash. Utilities & Trans. Comm'n March 17, 1995) (rejecting "fresh look" proposal, noting that "the Commission ordinarily refrains from interfering in contracts between U.S. West and its customers").

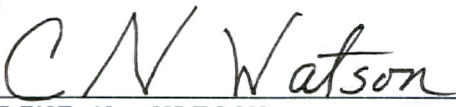


## CONCLUSION

AT&T knowingly entered into contracts with BellSouth seeking services at a lower price than would have otherwise been available to AT&T. In exchange for these lower prices, AT&T agreed to pay a termination liability if it did not honor its part of the contracts. AT&T has entered into contracts with BellSouth that this Commission has no authority to abrogate. Accordingly, the Commission should reconsider its prior ruling, and rule that AT&T must pay all applicable termination charges when it converts tariffed services to UNEs.

Respectfully submitted, this 9th day of February 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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245987





STATE OF SOUTH CAROLINA )  
 ) CERTIFICATE OF SERVICE  
COUNTY OF RICHLAND )

PERSONALLY APPEARED before me, Nyla M. Laney, who, being duly sworn, deposes and says that she is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused BellSouth's Motion For Reconsideration and/or Rehearing of Commission Order No. 2001-079 in Docket No. 2000-527-C to be served this February 9, 2001 by the method indicated below each addressee listed:

Gene Coker  
AT&T Communications of the Southern States,  
Inc.  
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Atlanta, Georgia 30309  
(Via Facsimile & U. S. Mail)

Florence P. Belser, Esquire  
Staff Attorney  
Public Service Commission of SC  
Post Office Drawer 11649  
Columbia, South Carolina 29211  
(Via Hand Delivery)

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\_\_\_\_\_  
Nyla M. Laney